



**93RD GENERAL ASSEMBLY**  
**State of Illinois**  
**2003 and 2004**

Introduced 2/6/2004, by John J. Cullerton

**SYNOPSIS AS INTRODUCED:**

730 ILCS 5/5-5-3	from Ch. 38, par. 1005-5-3
730 ILCS 5/5-6-1	from Ch. 38, par. 1005-6-1
730 ILCS 5/5-6-2	from Ch. 38, par. 1005-6-2
730 ILCS 5/5-6-4	from Ch. 38, par. 1005-6-4

Amends the Unified Code of Corrections. Provides that the court may impose a term of imprisonment in combination with a term of probation when an offender has been admitted into a drug court program under the Drug Court Treatment Act. Provides that the court may impose a term of probation that is concurrent or consecutive to a term of imprisonment so long as the maximum term imposed does not exceed the maximum term authorized under the Code. Provides that the court may provide that probation may commence while an offender is on mandatory supervised release, participating in a day release program, or being monitored by an electronic monitoring device. Provides that when an offender is re-sentenced after revocation of probation that was imposed in combination with a sentence of imprisonment for the same offense, the aggregate of the sentences may not exceed the maximum term authorized under the Code.

LRB093 21100 RLC 47149 b

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Unified Code of Corrections is amended by  
5 changing Sections 5-5-3, 5-6-1, 5-6-2, and 5-6-4 as follows:

6 (730 ILCS 5/5-5-3) (from Ch. 38, par. 1005-5-3)

7 Sec. 5-5-3. Disposition.

8 (a) Every person convicted of an offense shall be sentenced  
9 as provided in this Section.

10 (b) The following options shall be appropriate  
11 dispositions, alone or in combination, for all felonies and  
12 misdemeanors other than those identified in subsection (c) of  
13 this Section:

14 (1) A period of probation.

15 (2) A term of periodic imprisonment.

16 (3) A term of conditional discharge.

17 (4) A term of imprisonment.

18 (5) An order directing the offender to clean up and  
19 repair the damage, if the offender was convicted under  
20 paragraph (h) of Section 21-1 of the Criminal Code of 1961  
21 (now repealed).

22 (6) A fine.

23 (7) An order directing the offender to make restitution  
24 to the victim under Section 5-5-6 of this Code.

25 (8) A sentence of participation in a county impact  
26 incarceration program under Section 5-8-1.2 of this Code.

27 (9) A term of imprisonment in combination with a term  
28 of probation when the offender has been admitted into a  
29 drug court program under Section 20 of the Drug Court  
30 Treatment Act.

31 Whenever an individual is sentenced for an offense based  
32 upon an arrest for a violation of Section 11-501 of the

1 Illinois Vehicle Code, or a similar provision of a local  
2 ordinance, and the professional evaluation recommends remedial  
3 or rehabilitative treatment or education, neither the  
4 treatment nor the education shall be the sole disposition and  
5 either or both may be imposed only in conjunction with another  
6 disposition. The court shall monitor compliance with any  
7 remedial education or treatment recommendations contained in  
8 the professional evaluation. Programs conducting alcohol or  
9 other drug evaluation or remedial education must be licensed by  
10 the Department of Human Services. However, if the individual is  
11 not a resident of Illinois, the court may accept an alcohol or  
12 other drug evaluation or remedial education program in the  
13 state of such individual's residence. Programs providing  
14 treatment must be licensed under existing applicable  
15 alcoholism and drug treatment licensure standards.

16 In addition to any other fine or penalty required by law,  
17 any individual convicted of a violation of Section 11-501 of  
18 the Illinois Vehicle Code, Section 5-7 of the Snowmobile  
19 Registration and Safety Act, Section 5-16 of the Boat  
20 Registration and Safety Act, or a similar provision of local  
21 ordinance, whose operation of a motor vehicle while in  
22 violation of Section 11-501, Section 5-7, Section 5-16, or such  
23 ordinance proximately caused an incident resulting in an  
24 appropriate emergency response, shall be required to make  
25 restitution to a public agency for the costs of that emergency  
26 response. Such restitution shall not exceed \$1,000 per public  
27 agency for each such emergency response. For the purpose of  
28 this paragraph, emergency response shall mean any incident  
29 requiring a response by: a police officer as defined under  
30 Section 1-162 of the Illinois Vehicle Code; a fireman carried  
31 on the rolls of a regularly constituted fire department; and an  
32 ambulance as defined under Section 3.85 of the Emergency  
33 Medical Services (EMS) Systems Act.

34 Neither a fine nor restitution shall be the sole  
35 disposition for a felony and either or both may be imposed only  
36 in conjunction with another disposition.

1 (c) (1) When a defendant is found guilty of first degree  
2 murder the State may either seek a sentence of imprisonment  
3 under Section 5-8-1 of this Code, or where appropriate seek  
4 a sentence of death under Section 9-1 of the Criminal Code  
5 of 1961.

6 (2) A period of probation, a term of periodic  
7 imprisonment or conditional discharge shall not be imposed  
8 for the following offenses. The court shall sentence the  
9 offender to not less than the minimum term of imprisonment  
10 set forth in this Code for the following offenses, and may  
11 order a fine or restitution or both in conjunction with  
12 such term of imprisonment:

13 (A) First degree murder where the death penalty is  
14 not imposed.

15 (B) Attempted first degree murder.

16 (C) A Class X felony.

17 (D) A violation of Section 401.1 or 407 of the  
18 Illinois Controlled Substances Act, or a violation of  
19 subdivision (c) (1) or (c) (2) of Section 401 of that Act  
20 which relates to more than 5 grams of a substance  
21 containing heroin or cocaine or an analog thereof.

22 (E) A violation of Section 5.1 or 9 of the Cannabis  
23 Control Act.

24 (F) A Class 2 or greater felony if the offender had  
25 been convicted of a Class 2 or greater felony within 10  
26 years of the date on which the offender committed the  
27 offense for which he or she is being sentenced, except  
28 as otherwise provided in Section 40-10 of the  
29 Alcoholism and Other Drug Abuse and Dependency Act.

30 (G) Residential burglary, except as otherwise  
31 provided in Section 40-10 of the Alcoholism and Other  
32 Drug Abuse and Dependency Act.

33 (H) Criminal sexual assault.

34 (I) Aggravated battery of a senior citizen.

35 (J) A forcible felony if the offense was related to  
36 the activities of an organized gang.

1           Before July 1, 1994, for the purposes of this  
2 paragraph, "organized gang" means an association of 5  
3 or more persons, with an established hierarchy, that  
4 encourages members of the association to perpetrate  
5 crimes or provides support to the members of the  
6 association who do commit crimes.

7           Beginning July 1, 1994, for the purposes of this  
8 paragraph, "organized gang" has the meaning ascribed  
9 to it in Section 10 of the Illinois Streetgang  
10 Terrorism Omnibus Prevention Act.

11           (K) Vehicular hijacking.

12           (L) A second or subsequent conviction for the  
13 offense of hate crime when the underlying offense upon  
14 which the hate crime is based is felony aggravated  
15 assault or felony mob action.

16           (M) A second or subsequent conviction for the  
17 offense of institutional vandalism if the damage to the  
18 property exceeds \$300.

19           (N) A Class 3 felony violation of paragraph (1) of  
20 subsection (a) of Section 2 of the Firearm Owners  
21 Identification Card Act.

22           (O) A violation of Section 12-6.1 of the Criminal  
23 Code of 1961.

24           (P) A violation of paragraph (1), (2), (3), (4),  
25 (5), or (7) of subsection (a) of Section 11-20.1 of the  
26 Criminal Code of 1961.

27           (Q) A violation of Section 20-1.2 or 20-1.3 of the  
28 Criminal Code of 1961.

29           (R) A violation of Section 24-3A of the Criminal  
30 Code of 1961.

31           (S) A violation of Section 11-501(c-1)(3) of the  
32 Illinois Vehicle Code.

33           (T) A second or subsequent violation of paragraph  
34 (6.6) of subsection (a), subsection (c-5), or  
35 subsection (d-5) of Section 401 of the Illinois  
36 Controlled Substances Act.

1           (3) A minimum term of imprisonment of not less than 5  
2 days or 30 days of community service as may be determined  
3 by the court shall be imposed for a second violation  
4 committed within 5 years of a previous violation of Section  
5 11-501 of the Illinois Vehicle Code or a similar provision  
6 of a local ordinance. In the case of a third or subsequent  
7 violation committed within 5 years of a previous violation  
8 of Section 11-501 of the Illinois Vehicle Code or a similar  
9 provision of a local ordinance, a minimum term of either 10  
10 days of imprisonment or 60 days of community service shall  
11 be imposed.

12           (4) A minimum term of imprisonment of not less than 10  
13 consecutive days or 30 days of community service shall be  
14 imposed for a violation of paragraph (c) of Section 6-303  
15 of the Illinois Vehicle Code.

16           (4.1) A minimum term of 30 consecutive days of  
17 imprisonment, 40 days of 24 hour periodic imprisonment or  
18 720 hours of community service, as may be determined by the  
19 court, shall be imposed for a violation of Section 11-501  
20 of the Illinois Vehicle Code during a period in which the  
21 defendant's driving privileges are revoked or suspended,  
22 where the revocation or suspension was for a violation of  
23 Section 11-501 or Section 11-501.1 of that Code.

24           (4.2) Except as provided in paragraph (4.3) of this  
25 subsection (c), a minimum of 100 hours of community service  
26 shall be imposed for a second violation of Section 6-303 of  
27 the Illinois Vehicle Code.

28           (4.3) A minimum term of imprisonment of 30 days or 300  
29 hours of community service, as determined by the court,  
30 shall be imposed for a second violation of subsection (c)  
31 of Section 6-303 of the Illinois Vehicle Code.

32           (4.4) Except as provided in paragraph (4.5) and  
33 paragraph (4.6) of this subsection (c), a minimum term of  
34 imprisonment of 30 days or 300 hours of community service,  
35 as determined by the court, shall be imposed for a third or  
36 subsequent violation of Section 6-303 of the Illinois

1 Vehicle Code.

2 (4.5) A minimum term of imprisonment of 30 days shall  
3 be imposed for a third violation of subsection (c) of  
4 Section 6-303 of the Illinois Vehicle Code.

5 (4.6) A minimum term of imprisonment of 180 days shall  
6 be imposed for a fourth or subsequent violation of  
7 subsection (c) of Section 6-303 of the Illinois Vehicle  
8 Code.

9 (5) The court may sentence an offender convicted of a  
10 business offense or a petty offense or a corporation or  
11 unincorporated association convicted of any offense to:

12 (A) a period of conditional discharge;

13 (B) a fine;

14 (C) make restitution to the victim under Section  
15 5-5-6 of this Code.

16 (5.1) In addition to any penalties imposed under  
17 paragraph (5) of this subsection (c), and except as  
18 provided in paragraph (5.2) or (5.3), a person convicted of  
19 violating subsection (c) of Section 11-907 of the Illinois  
20 Vehicle Code shall have his or her driver's license,  
21 permit, or privileges suspended for at least 90 days but  
22 not more than one year, if the violation resulted in damage  
23 to the property of another person.

24 (5.2) In addition to any penalties imposed under  
25 paragraph (5) of this subsection (c), and except as  
26 provided in paragraph (5.3), a person convicted of  
27 violating subsection (c) of Section 11-907 of the Illinois  
28 Vehicle Code shall have his or her driver's license,  
29 permit, or privileges suspended for at least 180 days but  
30 not more than 2 years, if the violation resulted in injury  
31 to another person.

32 (5.3) In addition to any penalties imposed under  
33 paragraph (5) of this subsection (c), a person convicted of  
34 violating subsection (c) of Section 11-907 of the Illinois  
35 Vehicle Code shall have his or her driver's license,  
36 permit, or privileges suspended for 2 years, if the

1 violation resulted in the death of another person.

2 (6) In no case shall an offender be eligible for a  
3 disposition of probation or conditional discharge for a  
4 Class 1 felony committed while he was serving a term of  
5 probation or conditional discharge for a felony.

6 (7) When a defendant is adjudged a habitual criminal  
7 under Article 33B of the Criminal Code of 1961, the court  
8 shall sentence the defendant to a term of natural life  
9 imprisonment.

10 (8) When a defendant, over the age of 21 years, is  
11 convicted of a Class 1 or Class 2 felony, after having  
12 twice been convicted in any state or federal court of an  
13 offense that contains the same elements as an offense now  
14 classified in Illinois as a Class 2 or greater Class felony  
15 and such charges are separately brought and tried and arise  
16 out of different series of acts, such defendant shall be  
17 sentenced as a Class X offender. This paragraph shall not  
18 apply unless (1) the first felony was committed after the  
19 effective date of this amendatory Act of 1977; and (2) the  
20 second felony was committed after conviction on the first;  
21 and (3) the third felony was committed after conviction on  
22 the second. A person sentenced as a Class X offender under  
23 this paragraph is not eligible to apply for treatment as a  
24 condition of probation as provided by Section 40-10 of the  
25 Alcoholism and Other Drug Abuse and Dependency Act.

26 (9) A defendant convicted of a second or subsequent  
27 offense of ritualized abuse of a child may be sentenced to  
28 a term of natural life imprisonment.

29 (10) When a person is convicted of violating Section  
30 11-501 of the Illinois Vehicle Code or a similar provision  
31 of a local ordinance, the following penalties apply when  
32 his or her blood, breath, or urine was .16 or more based on  
33 the definition of blood, breath, or urine units in Section  
34 11-501.2 or that person is convicted of violating Section  
35 11-501 of the Illinois Vehicle Code while transporting a  
36 child under the age of 16:

1 (A) For a first violation of subsection (a) of  
2 Section 11-501, in addition to any other penalty that  
3 may be imposed under subsection (c) of Section 11-501:  
4 a mandatory minimum of 100 hours of community service  
5 and a minimum fine of \$500.

6 (B) For a second violation of subsection (a) of  
7 Section 11-501, in addition to any other penalty that  
8 may be imposed under subsection (c) of Section 11-501  
9 within 10 years: a mandatory minimum of 2 days of  
10 imprisonment and a minimum fine of \$1,250.

11 (C) For a third violation of subsection (a) of  
12 Section 11-501, in addition to any other penalty that  
13 may be imposed under subsection (c) of Section 11-501  
14 within 20 years: a mandatory minimum of 90 days of  
15 imprisonment and a minimum fine of \$2,500.

16 (D) For a fourth or subsequent violation of  
17 subsection (a) of Section 11-501: ineligibility for a  
18 sentence of probation or conditional discharge and a  
19 minimum fine of \$2,500.

20 (d) In any case in which a sentence originally imposed is  
21 vacated, the case shall be remanded to the trial court. The  
22 trial court shall hold a hearing under Section 5-4-1 of the  
23 Unified Code of Corrections which may include evidence of the  
24 defendant's life, moral character and occupation during the  
25 time since the original sentence was passed. The trial court  
26 shall then impose sentence upon the defendant. The trial court  
27 may impose any sentence which could have been imposed at the  
28 original trial subject to Section 5-5-4 of the Unified Code of  
29 Corrections. If a sentence is vacated on appeal or on  
30 collateral attack due to the failure of the trier of fact at  
31 trial to determine beyond a reasonable doubt the existence of a  
32 fact (other than a prior conviction) necessary to increase the  
33 punishment for the offense beyond the statutory maximum  
34 otherwise applicable, either the defendant may be re-sentenced  
35 to a term within the range otherwise provided or, if the State  
36 files notice of its intention to again seek the extended

1 sentence, the defendant shall be afforded a new trial.

2 (e) In cases where prosecution for aggravated criminal  
3 sexual abuse under Section 12-16 of the Criminal Code of 1961  
4 results in conviction of a defendant who was a family member of  
5 the victim at the time of the commission of the offense, the  
6 court shall consider the safety and welfare of the victim and  
7 may impose a sentence of probation only where:

8 (1) the court finds (A) or (B) or both are appropriate:

9 (A) the defendant is willing to undergo a court  
10 approved counseling program for a minimum duration of 2  
11 years; or

12 (B) the defendant is willing to participate in a  
13 court approved plan including but not limited to the  
14 defendant's:

15 (i) removal from the household;

16 (ii) restricted contact with the victim;

17 (iii) continued financial support of the  
18 family;

19 (iv) restitution for harm done to the victim;

20 and

21 (v) compliance with any other measures that  
22 the court may deem appropriate; and

23 (2) the court orders the defendant to pay for the  
24 victim's counseling services, to the extent that the court  
25 finds, after considering the defendant's income and  
26 assets, that the defendant is financially capable of paying  
27 for such services, if the victim was under 18 years of age  
28 at the time the offense was committed and requires  
29 counseling as a result of the offense.

30 Probation may be revoked or modified pursuant to Section  
31 5-6-4; except where the court determines at the hearing that  
32 the defendant violated a condition of his or her probation  
33 restricting contact with the victim or other family members or  
34 commits another offense with the victim or other family  
35 members, the court shall revoke the defendant's probation and  
36 impose a term of imprisonment.

1 For the purposes of this Section, "family member" and  
2 "victim" shall have the meanings ascribed to them in Section  
3 12-12 of the Criminal Code of 1961.

4 (f) This Article shall not deprive a court in other  
5 proceedings to order a forfeiture of property, to suspend or  
6 cancel a license, to remove a person from office, or to impose  
7 any other civil penalty.

8 (g) Whenever a defendant is convicted of an offense under  
9 Sections 11-14, 11-15, 11-15.1, 11-16, 11-17, 11-18, 11-18.1,  
10 11-19, 11-19.1, 11-19.2, 12-13, 12-14, 12-14.1, 12-15 or 12-16  
11 of the Criminal Code of 1961, the defendant shall undergo  
12 medical testing to determine whether the defendant has any  
13 sexually transmissible disease, including a test for infection  
14 with human immunodeficiency virus (HIV) or any other identified  
15 causative agent of acquired immunodeficiency syndrome (AIDS).  
16 Any such medical test shall be performed only by appropriately  
17 licensed medical practitioners and may include an analysis of  
18 any bodily fluids as well as an examination of the defendant's  
19 person. Except as otherwise provided by law, the results of  
20 such test shall be kept strictly confidential by all medical  
21 personnel involved in the testing and must be personally  
22 delivered in a sealed envelope to the judge of the court in  
23 which the conviction was entered for the judge's inspection in  
24 camera. Acting in accordance with the best interests of the  
25 victim and the public, the judge shall have the discretion to  
26 determine to whom, if anyone, the results of the testing may be  
27 revealed. The court shall notify the defendant of the test  
28 results. The court shall also notify the victim if requested by  
29 the victim, and if the victim is under the age of 15 and if  
30 requested by the victim's parents or legal guardian, the court  
31 shall notify the victim's parents or legal guardian of the test  
32 results. The court shall provide information on the  
33 availability of HIV testing and counseling at Department of  
34 Public Health facilities to all parties to whom the results of  
35 the testing are revealed and shall direct the State's Attorney  
36 to provide the information to the victim when possible. A

1 State's Attorney may petition the court to obtain the results  
2 of any HIV test administered under this Section, and the court  
3 shall grant the disclosure if the State's Attorney shows it is  
4 relevant in order to prosecute a charge of criminal  
5 transmission of HIV under Section 12-16.2 of the Criminal Code  
6 of 1961 against the defendant. The court shall order that the  
7 cost of any such test shall be paid by the county and may be  
8 taxed as costs against the convicted defendant.

9 (g-5) When an inmate is tested for an airborne communicable  
10 disease, as determined by the Illinois Department of Public  
11 Health including but not limited to tuberculosis, the results  
12 of the test shall be personally delivered by the warden or his  
13 or her designee in a sealed envelope to the judge of the court  
14 in which the inmate must appear for the judge's inspection in  
15 camera if requested by the judge. Acting in accordance with the  
16 best interests of those in the courtroom, the judge shall have  
17 the discretion to determine what if any precautions need to be  
18 taken to prevent transmission of the disease in the courtroom.

19 (h) Whenever a defendant is convicted of an offense under  
20 Section 1 or 2 of the Hypodermic Syringes and Needles Act, the  
21 defendant shall undergo medical testing to determine whether  
22 the defendant has been exposed to human immunodeficiency virus  
23 (HIV) or any other identified causative agent of acquired  
24 immunodeficiency syndrome (AIDS). Except as otherwise provided  
25 by law, the results of such test shall be kept strictly  
26 confidential by all medical personnel involved in the testing  
27 and must be personally delivered in a sealed envelope to the  
28 judge of the court in which the conviction was entered for the  
29 judge's inspection in camera. Acting in accordance with the  
30 best interests of the public, the judge shall have the  
31 discretion to determine to whom, if anyone, the results of the  
32 testing may be revealed. The court shall notify the defendant  
33 of a positive test showing an infection with the human  
34 immunodeficiency virus (HIV). The court shall provide  
35 information on the availability of HIV testing and counseling  
36 at Department of Public Health facilities to all parties to

1 whom the results of the testing are revealed and shall direct  
2 the State's Attorney to provide the information to the victim  
3 when possible. A State's Attorney may petition the court to  
4 obtain the results of any HIV test administered under this  
5 Section, and the court shall grant the disclosure if the  
6 State's Attorney shows it is relevant in order to prosecute a  
7 charge of criminal transmission of HIV under Section 12-16.2 of  
8 the Criminal Code of 1961 against the defendant. The court  
9 shall order that the cost of any such test shall be paid by the  
10 county and may be taxed as costs against the convicted  
11 defendant.

12 (i) All fines and penalties imposed under this Section for  
13 any violation of Chapters 3, 4, 6, and 11 of the Illinois  
14 Vehicle Code, or a similar provision of a local ordinance, and  
15 any violation of the Child Passenger Protection Act, or a  
16 similar provision of a local ordinance, shall be collected and  
17 disbursed by the circuit clerk as provided under Section 27.5  
18 of the Clerks of Courts Act.

19 (j) In cases when prosecution for any violation of Section  
20 11-6, 11-8, 11-9, 11-11, 11-14, 11-15, 11-15.1, 11-16, 11-17,  
21 11-17.1, 11-18, 11-18.1, 11-19, 11-19.1, 11-19.2, 11-20.1,  
22 11-21, 12-13, 12-14, 12-14.1, 12-15, or 12-16 of the Criminal  
23 Code of 1961, any violation of the Illinois Controlled  
24 Substances Act, or any violation of the Cannabis Control Act  
25 results in conviction, a disposition of court supervision, or  
26 an order of probation granted under Section 10 of the Cannabis  
27 Control Act or Section 410 of the Illinois Controlled Substance  
28 Act of a defendant, the court shall determine whether the  
29 defendant is employed by a facility or center as defined under  
30 the Child Care Act of 1969, a public or private elementary or  
31 secondary school, or otherwise works with children under 18  
32 years of age on a daily basis. When a defendant is so employed,  
33 the court shall order the Clerk of the Court to send a copy of  
34 the judgment of conviction or order of supervision or probation  
35 to the defendant's employer by certified mail. If the employer  
36 of the defendant is a school, the Clerk of the Court shall

1 direct the mailing of a copy of the judgment of conviction or  
2 order of supervision or probation to the appropriate regional  
3 superintendent of schools. The regional superintendent of  
4 schools shall notify the State Board of Education of any  
5 notification under this subsection.

6 (j-5) A defendant at least 17 years of age who is convicted  
7 of a felony and who has not been previously convicted of a  
8 misdemeanor or felony and who is sentenced to a term of  
9 imprisonment in the Illinois Department of Corrections shall as  
10 a condition of his or her sentence be required by the court to  
11 attend educational courses designed to prepare the defendant  
12 for a high school diploma and to work toward a high school  
13 diploma or to work toward passing the high school level Test of  
14 General Educational Development (GED) or to work toward  
15 completing a vocational training program offered by the  
16 Department of Corrections. If a defendant fails to complete the  
17 educational training required by his or her sentence during the  
18 term of incarceration, the Prisoner Review Board shall, as a  
19 condition of mandatory supervised release, require the  
20 defendant, at his or her own expense, to pursue a course of  
21 study toward a high school diploma or passage of the GED test.  
22 The Prisoner Review Board shall revoke the mandatory supervised  
23 release of a defendant who wilfully fails to comply with this  
24 subsection (j-5) upon his or her release from confinement in a  
25 penal institution while serving a mandatory supervised release  
26 term; however, the inability of the defendant after making a  
27 good faith effort to obtain financial aid or pay for the  
28 educational training shall not be deemed a wilful failure to  
29 comply. The Prisoner Review Board shall recommit the defendant  
30 whose mandatory supervised release term has been revoked under  
31 this subsection (j-5) as provided in Section 3-3-9. This  
32 subsection (j-5) does not apply to a defendant who has a high  
33 school diploma or has successfully passed the GED test. This  
34 subsection (j-5) does not apply to a defendant who is  
35 determined by the court to be developmentally disabled or  
36 otherwise mentally incapable of completing the educational or

1 vocational program.

2 (k) A court may not impose a sentence or disposition for a  
3 felony or misdemeanor that requires the defendant to be  
4 implanted or injected with or to use any form of birth control.

5 (l) (A) Except as provided in paragraph (C) of subsection  
6 (l), whenever a defendant, who is an alien as defined by  
7 the Immigration and Nationality Act, is convicted of any  
8 felony or misdemeanor offense, the court after sentencing  
9 the defendant may, upon motion of the State's Attorney,  
10 hold sentence in abeyance and remand the defendant to the  
11 custody of the Attorney General of the United States or his  
12 or her designated agent to be deported when:

13 (1) a final order of deportation has been issued  
14 against the defendant pursuant to proceedings under  
15 the Immigration and Nationality Act, and

16 (2) the deportation of the defendant would not  
17 deprecate the seriousness of the defendant's conduct  
18 and would not be inconsistent with the ends of justice.

19 Otherwise, the defendant shall be sentenced as  
20 provided in this Chapter V.

21 (B) If the defendant has already been sentenced for a  
22 felony or misdemeanor offense, or has been placed on  
23 probation under Section 10 of the Cannabis Control Act or  
24 Section 410 of the Illinois Controlled Substances Act, the  
25 court may, upon motion of the State's Attorney to suspend  
26 the sentence imposed, commit the defendant to the custody  
27 of the Attorney General of the United States or his or her  
28 designated agent when:

29 (1) a final order of deportation has been issued  
30 against the defendant pursuant to proceedings under  
31 the Immigration and Nationality Act, and

32 (2) the deportation of the defendant would not  
33 deprecate the seriousness of the defendant's conduct  
34 and would not be inconsistent with the ends of justice.

35 (C) This subsection (l) does not apply to offenders who  
36 are subject to the provisions of paragraph (2) of

1 subsection (a) of Section 3-6-3.

2 (D) Upon motion of the State's Attorney, if a defendant  
3 sentenced under this Section returns to the jurisdiction of  
4 the United States, the defendant shall be recommitted to  
5 the custody of the county from which he or she was  
6 sentenced. Thereafter, the defendant shall be brought  
7 before the sentencing court, which may impose any sentence  
8 that was available under Section 5-5-3 at the time of  
9 initial sentencing. In addition, the defendant shall not be  
10 eligible for additional good conduct credit for  
11 meritorious service as provided under Section 3-6-6.

12 (m) A person convicted of criminal defacement of property  
13 under Section 21-1.3 of the Criminal Code of 1961, in which the  
14 property damage exceeds \$300 and the property damaged is a  
15 school building, shall be ordered to perform community service  
16 that may include cleanup, removal, or painting over the  
17 defacement.

18 (n) The court may sentence a person convicted of a  
19 violation of Section 12-19, 12-21, or 16-1.3 of the Criminal  
20 Code of 1961 (i) to an impact incarceration program if the  
21 person is otherwise eligible for that program under Section  
22 5-8-1.1, (ii) to community service, or (iii) if the person is  
23 an addict or alcoholic, as defined in the Alcoholism and Other  
24 Drug Abuse and Dependency Act, to a substance or alcohol abuse  
25 program licensed under that Act.

26 (Source: P.A. 92-183, eff. 7-27-01; 92-248, eff. 8-3-01;  
27 92-283, eff. 1-1-02; 92-340, eff. 8-10-01; 92-418, eff.  
28 8-17-01; 92-422, eff. 8-17-01; 92-651, eff. 7-11-02; 92-698,  
29 eff. 7-19-02; 93-44, eff. 7-1-03; 93-156, eff. 1-1-04; 93-169,  
30 eff. 7-10-03; 93-301, eff. 1-1-04; 93-419, eff. 1-1-04; 93-546,  
31 eff. 1-1-04; revised 10-9-03.)

32 (730 ILCS 5/5-6-1) (from Ch. 38, par. 1005-6-1)

33 Sec. 5-6-1. Sentences of Probation and of Conditional  
34 Discharge and Disposition of Supervision. The General Assembly  
35 finds that in order to protect the public, the criminal justice

1 system must compel compliance with the conditions of probation  
2 by responding to violations with swift, certain and fair  
3 punishments and intermediate sanctions. The Chief Judge of each  
4 circuit shall adopt a system of structured, intermediate  
5 sanctions for violations of the terms and conditions of a  
6 sentence of probation, conditional discharge or disposition of  
7 supervision.

8 (a) Except where specifically prohibited by other  
9 provisions of this Code, the court shall impose a sentence of  
10 probation or conditional discharge upon an offender unless,  
11 having regard to the nature and circumstance of the offense,  
12 and to the history, character and condition of the offender,  
13 the court is of the opinion that:

14 (1) his imprisonment or periodic imprisonment is  
15 necessary for the protection of the public; or

16 (2) probation or conditional discharge would deprecate  
17 the seriousness of the offender's conduct and would be  
18 inconsistent with the ends of justice; ~~or-~~

19 (3) a combination of imprisonment with concurrent or  
20 consecutive probation when an offender has been admitted  
21 into a drug court program under Section 20 of the Drug  
22 Court Treatment Act is necessary for the protection of the  
23 public and for the rehabilitation of the offender.

24 The court shall impose as a condition of a sentence of  
25 probation, conditional discharge, or supervision, that the  
26 probation agency may invoke any sanction from the list of  
27 intermediate sanctions adopted by the chief judge of the  
28 circuit court for violations of the terms and conditions of the  
29 sentence of probation, conditional discharge, or supervision,  
30 subject to the provisions of Section 5-6-4 of this Act.

31 (b) The court may impose a sentence of conditional  
32 discharge for an offense if the court is of the opinion that  
33 neither a sentence of imprisonment nor of periodic imprisonment  
34 nor of probation supervision is appropriate.

35 (c) The court may, upon a plea of guilty or a stipulation  
36 by the defendant of the facts supporting the charge or a

1 finding of guilt, defer further proceedings and the imposition  
2 of a sentence, and enter an order for supervision of the  
3 defendant, if the defendant is not charged with: (i) a Class A  
4 misdemeanor, as defined by the following provisions of the  
5 Criminal Code of 1961: Sections 12-3.2; 12-15; 26-5; 31-1;  
6 31-6; 31-7; subsections (b) and (c) of Section 21-1; paragraph  
7 (1) through (5), (8), (10), and (11) of subsection (a) of  
8 Section 24-1; (ii) a Class A misdemeanor violation of Section  
9 3.01, 3.03-1, or 4.01 of the Humane Care for Animals Act; or  
10 (iii) felony. If the defendant is not barred from receiving an  
11 order for supervision as provided in this subsection, the court  
12 may enter an order for supervision after considering the  
13 circumstances of the offense, and the history, character and  
14 condition of the offender, if the court is of the opinion that:

15 (1) the offender is not likely to commit further  
16 crimes;

17 (2) the defendant and the public would be best served  
18 if the defendant were not to receive a criminal record; and

19 (3) in the best interests of justice an order of  
20 supervision is more appropriate than a sentence otherwise  
21 permitted under this Code.

22 (d) The provisions of paragraph (c) shall not apply to a  
23 defendant charged with violating Section 11-501 of the Illinois  
24 Vehicle Code or a similar provision of a local ordinance when  
25 the defendant has previously been:

26 (1) convicted for a violation of Section 11-501 of the  
27 Illinois Vehicle Code or a similar provision of a local  
28 ordinance or any similar law or ordinance of another state;  
29 or

30 (2) assigned supervision for a violation of Section  
31 11-501 of the Illinois Vehicle Code or a similar provision  
32 of a local ordinance or any similar law or ordinance of  
33 another state; or

34 (3) pleaded guilty to or stipulated to the facts  
35 supporting a charge or a finding of guilty to a violation  
36 of Section 11-503 of the Illinois Vehicle Code or a similar

1 provision of a local ordinance or any similar law or  
2 ordinance of another state, and the plea or stipulation was  
3 the result of a plea agreement.

4 The court shall consider the statement of the prosecuting  
5 authority with regard to the standards set forth in this  
6 Section.

7 (e) The provisions of paragraph (c) shall not apply to a  
8 defendant charged with violating Section 16A-3 of the Criminal  
9 Code of 1961 if said defendant has within the last 5 years  
10 been:

11 (1) convicted for a violation of Section 16A-3 of the  
12 Criminal Code of 1961; or

13 (2) assigned supervision for a violation of Section  
14 16A-3 of the Criminal Code of 1961.

15 The court shall consider the statement of the prosecuting  
16 authority with regard to the standards set forth in this  
17 Section.

18 (f) The provisions of paragraph (c) shall not apply to a  
19 defendant charged with violating Sections 15-111, 15-112,  
20 15-301, paragraph (b) of Section 6-104, Section 11-605, or  
21 Section 11-1414 of the Illinois Vehicle Code or a similar  
22 provision of a local ordinance.

23 (g) Except as otherwise provided in paragraph (i) of this  
24 Section, the provisions of paragraph (c) shall not apply to a  
25 defendant charged with violating Section 3-707, 3-708, 3-710,  
26 or 5-401.3 of the Illinois Vehicle Code or a similar provision  
27 of a local ordinance if the defendant has within the last 5  
28 years been:

29 (1) convicted for a violation of Section 3-707, 3-708,  
30 3-710, or 5-401.3 of the Illinois Vehicle Code or a similar  
31 provision of a local ordinance; or

32 (2) assigned supervision for a violation of Section  
33 3-707, 3-708, 3-710, or 5-401.3 of the Illinois Vehicle  
34 Code or a similar provision of a local ordinance.

35 The court shall consider the statement of the prosecuting  
36 authority with regard to the standards set forth in this

1 Section.

2 (h) The provisions of paragraph (c) shall not apply to a  
3 defendant under the age of 21 years charged with violating a  
4 serious traffic offense as defined in Section 1-187.001 of the  
5 Illinois Vehicle Code:

6 (1) unless the defendant, upon payment of the fines,  
7 penalties, and costs provided by law, agrees to attend and  
8 successfully complete a traffic safety program approved by  
9 the court under standards set by the Conference of Chief  
10 Circuit Judges. The accused shall be responsible for  
11 payment of any traffic safety program fees. If the accused  
12 fails to file a certificate of successful completion on or  
13 before the termination date of the supervision order, the  
14 supervision shall be summarily revoked and conviction  
15 entered. The provisions of Supreme Court Rule 402 relating  
16 to pleas of guilty do not apply in cases when a defendant  
17 enters a guilty plea under this provision; or

18 (2) if the defendant has previously been sentenced  
19 under the provisions of paragraph (c) on or after January  
20 1, 1998 for any serious traffic offense as defined in  
21 Section 1-187.001 of the Illinois Vehicle Code.

22 (i) The provisions of paragraph (c) shall not apply to a  
23 defendant charged with violating Section 3-707 of the Illinois  
24 Vehicle Code or a similar provision of a local ordinance if the  
25 defendant has been assigned supervision for a violation of  
26 Section 3-707 of the Illinois Vehicle Code or a similar  
27 provision of a local ordinance.

28 (j) The provisions of paragraph (c) shall not apply to a  
29 defendant charged with violating Section 6-303 of the Illinois  
30 Vehicle Code or a similar provision of a local ordinance when  
31 the revocation or suspension was for a violation of Section  
32 11-501 or a similar provision of a local ordinance, a violation  
33 of Section 11-501.1 or paragraph (b) of Section 11-401 of the  
34 Illinois Vehicle Code, or a violation of Section 9-3 of the  
35 Criminal Code of 1961 if the defendant has within the last 10  
36 years been:

1 (1) convicted for a violation of Section 6-303 of the  
2 Illinois Vehicle Code or a similar provision of a local  
3 ordinance; or

4 (2) assigned supervision for a violation of Section  
5 6-303 of the Illinois Vehicle Code or a similar provision  
6 of a local ordinance.

7 (Source: P.A. 93-388, eff. 7-25-03.)

8 (730 ILCS 5/5-6-2) (from Ch. 38, par. 1005-6-2)

9 Sec. 5-6-2. Incidents of Probation and of Conditional  
10 Discharge.

11 (a) When an offender is sentenced to probation or  
12 conditional discharge, the court shall impose a period under  
13 paragraph (b) of this Section, and shall specify the conditions  
14 under Section 5-6-3.

15 (b) Unless terminated sooner as provided in paragraph (c)  
16 of this Section or extended pursuant to paragraph (e) of this  
17 Section, the period of probation or conditional discharge shall  
18 be as follows:

19 (1) for a Class 1 or Class 2 felony, not to exceed 4  
20 years;

21 (2) for a Class 3 or Class 4 felony, not to exceed 30  
22 months;

23 (3) for a misdemeanor, not to exceed 2 years;

24 (4) for a petty offense, not to exceed 6 months.

25 Multiple terms of probation imposed at the same time shall  
26 run concurrently.

27 (c) The court may at any time terminate probation or  
28 conditional discharge if warranted by the conduct of the  
29 offender and the ends of justice, as provided in Section 5-6-4.

30 (d) Upon the expiration or termination of the period of  
31 probation or of conditional discharge, the court shall enter an  
32 order discharging the offender.

33 (e) The court may extend any period of probation or  
34 conditional discharge beyond the limits set forth in paragraph  
35 (b) of this Section upon a violation of a condition of the

1 probation or conditional discharge, for the payment of an  
2 assessment required by Section 10.3 of the Cannabis Control Act  
3 or Section 411.2 of the Illinois Controlled Substances Act, or  
4 for the payment of restitution as provided by an order of  
5 restitution under Section 5-5-6 of this Code.

6 (f) The court may impose a term of probation that is  
7 concurrent or consecutive to a term of imprisonment so long as  
8 the maximum term imposed does not exceed the maximum term  
9 provided under Article 8 of this Chapter. The court may provide  
10 that probation may commence while an offender is on mandatory  
11 supervised release, participating in a day release program, or  
12 being monitored by an electronic monitoring device.

13 (Source: P.A. 91-153, eff. 1-1-00.)

14 (730 ILCS 5/5-6-4) (from Ch. 38, par. 1005-6-4)

15 Sec. 5-6-4. Violation, Modification or Revocation of  
16 Probation, of Conditional Discharge or Supervision or of a  
17 sentence of county impact incarceration - Hearing.

18 (a) Except in cases where conditional discharge or  
19 supervision was imposed for a petty offense as defined in  
20 Section 5-1-17, when a petition is filed charging a violation  
21 of a condition, the court may:

22 (1) in the case of probation violations, order the  
23 issuance of a notice to the offender to be present by the  
24 County Probation Department or such other agency  
25 designated by the court to handle probation matters; and in  
26 the case of conditional discharge or supervision  
27 violations, such notice to the offender shall be issued by  
28 the Circuit Court Clerk; and in the case of a violation of  
29 a sentence of county impact incarceration, such notice  
30 shall be issued by the Sheriff;

31 (2) order a summons to the offender to be present for  
32 hearing; or

33 (3) order a warrant for the offender's arrest where  
34 there is danger of his fleeing the jurisdiction or causing  
35 serious harm to others or when the offender fails to answer

1 a summons or notice from the clerk of the court or Sheriff.

2 Personal service of the petition for violation of probation  
3 or the issuance of such warrant, summons or notice shall toll  
4 the period of probation, conditional discharge, supervision,  
5 or sentence of county impact incarceration until the final  
6 determination of the charge, and the term of probation,  
7 conditional discharge, supervision, or sentence of county  
8 impact incarceration shall not run until the hearing and  
9 disposition of the petition for violation.

10 (b) The court shall conduct a hearing of the alleged  
11 violation. The court shall admit the offender to bail pending  
12 the hearing unless the alleged violation is itself a criminal  
13 offense in which case the offender shall be admitted to bail on  
14 such terms as are provided in the Code of Criminal Procedure of  
15 1963, as amended. In any case where an offender remains  
16 incarcerated only as a result of his alleged violation of the  
17 court's earlier order of probation, supervision, conditional  
18 discharge, or county impact incarceration such hearing shall be  
19 held within 14 days of the onset of said incarceration, unless  
20 the alleged violation is the commission of another offense by  
21 the offender during the period of probation, supervision or  
22 conditional discharge in which case such hearing shall be held  
23 within the time limits described in Section 103-5 of the Code  
24 of Criminal Procedure of 1963, as amended.

25 (c) The State has the burden of going forward with the  
26 evidence and proving the violation by the preponderance of the  
27 evidence. The evidence shall be presented in open court with  
28 the right of confrontation, cross-examination, and  
29 representation by counsel.

30 (d) Probation, conditional discharge, periodic  
31 imprisonment and supervision shall not be revoked for failure  
32 to comply with conditions of a sentence or supervision, which  
33 imposes financial obligations upon the offender unless such  
34 failure is due to his willful refusal to pay.

35 (e) If the court finds that the offender has violated a  
36 condition at any time prior to the expiration or termination of

1 the period, it may continue him on the existing sentence, with  
2 or without modifying or enlarging the conditions, or may impose  
3 any other sentence that was available under Section 5-5-3 at  
4 the time of initial sentencing. If the court finds that the  
5 person has failed to successfully complete his or her sentence  
6 to a county impact incarceration program, the court may impose  
7 any other sentence that was available under Section 5-5-3 at  
8 the time of initial sentencing, except for a sentence of  
9 probation or conditional discharge.

10 (f) The conditions of probation, of conditional discharge,  
11 of supervision, or of a sentence of county impact incarceration  
12 may be modified by the court on motion of the supervising  
13 agency or on its own motion or at the request of the offender  
14 after notice and a hearing.

15 (g) A judgment revoking supervision, probation,  
16 conditional discharge, or a sentence of county impact  
17 incarceration is a final appealable order.

18 (h) Resentencing after revocation of probation,  
19 conditional discharge, supervision, or a sentence of county  
20 impact incarceration shall be under Article 4. Time served on  
21 probation, conditional discharge or supervision shall not be  
22 credited by the court against a sentence of imprisonment or  
23 periodic imprisonment unless the court orders otherwise.

24 (i) Instead of filing a violation of probation, conditional  
25 discharge, supervision, or a sentence of county impact  
26 incarceration, an agent or employee of the supervising agency  
27 with the concurrence of his or her supervisor may serve on the  
28 defendant a Notice of Intermediate Sanctions. The Notice shall  
29 contain the technical violation or violations involved, the  
30 date or dates of the violation or violations, and the  
31 intermediate sanctions to be imposed. Upon receipt of the  
32 Notice, the defendant shall immediately accept or reject the  
33 intermediate sanctions. If the sanctions are accepted, they  
34 shall be imposed immediately. If the intermediate sanctions are  
35 rejected or the defendant does not respond to the Notice, a  
36 violation of probation, conditional discharge, supervision, or

1 a sentence of county impact incarceration shall be immediately  
2 filed with the court. The State's Attorney and the sentencing  
3 court shall be notified of the Notice of Sanctions. Upon  
4 successful completion of the intermediate sanctions, a court  
5 may not revoke probation, conditional discharge, supervision,  
6 or a sentence of county impact incarceration or impose  
7 additional sanctions for the same violation. A notice of  
8 intermediate sanctions may not be issued for any violation of  
9 probation, conditional discharge, supervision, or a sentence  
10 of county impact incarceration which could warrant an  
11 additional, separate felony charge. The intermediate sanctions  
12 shall include a term of home detention as provided in Article  
13 8A of Chapter V of this Code for multiple or repeat violations  
14 of the terms and conditions of a sentence of probation,  
15 conditional discharge, or supervision.

16 (j) When an offender is re-sentenced after revocation of  
17 probation that was imposed in combination with a sentence of  
18 imprisonment for the same offense, the aggregate of the  
19 sentences may not exceed the maximum term authorized under  
20 Article 8 of this Chapter.

21 (Source: P.A. 89-198, eff. 7-21-95; 89-587, eff. 7-31-96;  
22 89-647, eff. 1-1-97; 90-14, eff. 7-1-97.)